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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,683	09/02/2005	Frederic Impellizzeri	1811-64	7190
24106	7590	01/29/2008		
EGBERT LAW OFFICES 412 MAIN STREET, 7TH FLOOR HOUSTON, TX 77002			EXAMINER HOFFMAN, MARY C	
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			01/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,683

Applicant(s)

IMPELLIZZERI, FREDERIC

Examiner

Mary Hoffman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Interview Summary

It is noted that the interview summary mailed 7/20/2007 contained several typographical errors that are herein corrected for the record: In line 4, "non-obvious" should have been stated as --obvious--, and in line 5, "unobvious" should have been stated as --obvious--. The examiner maintains that it was made clear during the interview that the all of the claims were either anticipated or obvious over the prior art despite the typographical errors contained in the interview summary. As a result of the interview, Applicant has significantly amended to try to overcome the cited prior art.

Also, it is further noted that it is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file. See MPEP 713.04.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 27 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. The disclosure does not reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the limitations "said plurality of inserts having a generally conical shape" in claim 27, line 3, and "planarly fixed" in claim 28, line 14. The specification does not recite this term, and the drawings do not appear to show generally conical or planarly fixed inserts. Rather, the inserts appear to be rounded and protruding from the planar bone plate surface in FIGS. 4-6. Thus, the terms "generally conical" and "planarly fixed" is being considered new matter. It is further noted that with regard to claim 27, it appears that Applicant may have intended to claim that the inserts have generally conical shaped openings, which would not be considered new matter if recited in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buhler et al. (U.S. Patent No. 6,540,746) in view of Dixon et al. (U.S. Patent No. 6,656,181) and Frigg et al. (U.S. Patent No. 6,206,881).

Buhler et al. disclose a self-locking osteosynthesis device comprising a plate (ref. #1) having a plurality of openings (ref. #19) formed therein, each of the plurality of

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openings having a diameter and an edge (see FIG. 3, bottom, particularly the bottom right corner) forming a shoulder within the opening, the plate being formed of a metallic material, titanium, (col. 3, lines 65-66); a plurality of inserts (see FIG. 3, ref. #8,11) respectively fixedly and non-rotationally received in the plurality of openings, each of the plurality of inserts defining a hole having a smooth wall and a diameter less than the diameter of the opening, each of the plurality of inserts being formed of a biocompatible polymeric material (col. 3, lines 1-60), each insert fixedly engaging the shoulder of the opening, a plurality of bone screws respectively received in the hole of the plurality of inserts, the plurality of bone screws having a thread (see ref. #2) on an outer surface thereof, the biocompatible polymeric material being suitable for, or capable of, allowing a self-tapping of the smooth wall of the hole with the thread of the plurality of bone screws, and the bone screws having a head locked in the plurality of inserts when the thread of the bone screw engages an underlying surface. The plurality of inserts being mechanically secured in the plurality of openings. Each insert being planarly fixed within the plate.

Buhler et al. disclose the claimed invention except for

1.) the plurality of inserts having a width greater than the plate; and 2.) each tapping bone screw head having a conical shape and conical threading allowing the bone screw to be angularly received into conical openings; and 3.) the plurality of inserts being formed of a thermoplastic polymer or polyether ether ketone material.

1.) Dixon et al. disclose inserts having a width greater than the plate for guiding (see FIG. 8, col. 3, lines 60-62). It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to construct the device of Buhler et al. with the plurality of inserts having a width greater than the plate in view of Dixon et al. to perform the function of guiding.

2.) Frigg et al. disclose tapping bone screw heads having a conical shape and conical threading allowing the bone screws to be angularly received into conical openings to achieve locking even when the bone screw is imperfectly inserted coaxially (see FIG. 1-2, col. 2, lines 1-7 and line 24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Buhler et al. with tapping bone screw heads having a conical shape and conical threading allowing the bone screw to be angularly received into conical openings in view of Frigg et al. to achieve locking even when the bone screw is imperfectly inserted coaxially.

3.) It would have further been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Buhler et al. in view of Dixon et al. and Frigg et al. with the plurality of inserts being formed of a thermoplastic polymer or polyether ether ketone material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892, particularly Kaute (U.S. Patent No. 3,596,656), Kummer et al. (4,338,926) and Sutter et al. (U.S. Patent No. 4,388,921).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

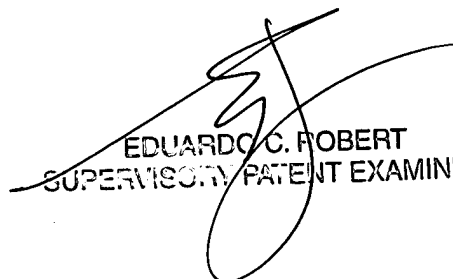
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER